

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Approval of 2008 Long-Term Request for
Offer Results and for Adoption of Cost Recovery
and Ratemaking Mechanisms. (U39E)

Application 09-09-021
(Filed September 30, 2009)

**DECISION GRANTING INTERVENOR COMPENSATION TO
THE UTILITY REFORM NETWORK**

This decision awards The Utility Reform Network \$103,392 in compensation for fees and costs associated with obtaining judicial review of Decision (D.) 10-12-050 and D.11-05-049. This proceeding is closed.

1. Background

The Utility Reform Network (TURN) seeks compensation for its work associated with the judicial review that culminated in the Court of Appeals of California's Decision No. A132439, issued March 16, 2012, and TURN's work leading up to the California Public Utilities Commission's (Commission) issuance of D.10-12-050 and D.11-05-049.

In D.10-12-050 the Commission denied Pacific Gas and Electric Company's (PG&E) petition for modification of D.10-07-045. In D.10-12-050 the PG&E Purchase and Sales Agreement with Contra Costa Generating Station, LLC, for the Oakley Project was approved. The Purchase and Sales Agreement was subject to the condition that PG&E not take ownership of the plant prior to January 1, 2016, or under the condition that PG&E's shareholders absorb the associated revenue requirements from the date of purchase until January 1, 2016.

In D.11-05-049 the Commission found that good cause did not exist for granting rehearing of D.10-12-050 and chose to modify several of the ordering paragraphs in the decision.

The March 16, 2012, Court of Appeal decision addressed the Commission's failure to follow its own rules and the failure to comply with the statutory requirement that a revised alternate decision must be circulated for further public comment.¹ TURN challenged the manner in which the Commission added the need for capacity for 2016 as a new issue to Application (A.) 09-09-021 because the scoping memo had limited the procurement review to through 2015. Additionally, TURN's challenge included the Commission's consideration of the PG&E petition as an application without treating it as such in terms of procedural requirements associated with an application. This included a lack of opportunity for parties to file a protest, conduct discovery, and address the need for evidentiary hearings. The appellate court agreed with TURN, that the Commission's failure to follow the procedural requirements associated with an application constitutes a failure to proceed as required by law.

TURN actively participated in the judicial review of D.10-12-050 and D.11-05-049. TURN seeks to recover the fees and costs incurred during judicial review, including work in the underlying proceeding that was a necessary predicate to judicial review. TURN seeks compensation based on the substantial contribution to the proceedings leading up to the two decisions that the Court of Appeal annulled.

¹ Public Utilities (Pub. Util.) Code Section (§) 311(e).

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from the utility's ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g) and 1804(b)(1).)

5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

3. Procedural Issues

TURN filed a Supplemental Notice of Intent to Claim Compensation (NOI) pursuant to Rule 17.1(f) covering judicial review work that TURN performed in the petition before the California Court of Appeal. TURN's NOI, filed on December 22, 2009, demonstrated significant financial hardship in the proceeding. On March 10, 2011, Administrative Law Judge (ALJ) Darwin E. Farrar issued a decision granting intervenor compensation to TURN based on a ruling in A.08-05-023 finding that TURN is a customer pursuant to § 1802(b), has met the requirement for financial hardship pursuant to § 1804(a)(2)(B) and is eligible for intervenor compensation.

TURN filed its request for compensation for work in this proceeding and its judicial review work on April 26, 2012. TURN's request for compensation complies with § 1804(c) and is timely.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several areas:

- 1) Whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer.²
- 2) Whether the customer's contentions or recommendations paralleled those of another party.
- 3) Whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a full record that assisted the Commission in making its decision.³

As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁴

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the

² Pub. Util. Code § 1802(i).

³ Pub. Util. Code §§ 1801.3(f) and 1802.5.

⁴ D.98-04-059, 79 CPUC2d 628 at 653.

decision or order. For example, the Commission could find that the customer made a substantial contribution if a customer provided a unique perspective that enriched the Commission's deliberations and the record.

Additionally, § 1802(a) of the Public Utilities Code defines "compensation" as "payment for all or part, as determined by the Commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of obtaining an award under this article and of obtaining judicial review, if any." With this guidance in mind, we turn to the contributions TURN claims it made to the proceeding.

TURN filed a Petition for Writ of Review in the Court of Appeal of the State of California, First Appellate District, on March 16, 2012. The writ challenged the manner in which the Commission added the need for capacity for 2016 as a new issue to A.09-09-021. The Court of Appeal agreed with TURN's writ argument, that the terms of the scoping memo limited the procurement review to the period through 2015.⁵ Based on our review of TURN's writ, and our review of the appellate court decision, we agree that TURN made a substantial contribution to the Court of Appeal's decision. We agree that TURN's involvement in the above proceeding was extensive and constituted a substantial contribution involving broad and complex issues requiring judicial review. TURN acknowledges that the Commission has indicated that an award of intervenor compensation may not be appropriate unless the intervenor

⁵ *The Utility Reform Network v. CPUC* (Mar. 16, 2012, A132439 [nonpub. opn.] at 12.

prevailed in the judicial review process.⁶ Here, TURN persuaded the Court of Appeal to adopt TURN's position with regard to the issues raised in its petition for writ of review of D.10-12-050 and D.11-05-049. We find that TURN's contributions to the Court of Appeal review of the above decisions, cited above, were substantial.

We further find that TURN's contributions were not duplicative because TURN was the only petitioner in the appeal.

5. Enhancement

TURN requests an enhancement of \$20,175 or 33% for their judicial review work on D.10-12-050 and D.11-15-049. TURN argues that in past awards of intervenor compensation, the Commission has recognized circumstances where an enhancement of the base level of an award is warranted.⁷ The Commission has previously granted an upward adjustment to intervenor compensation awards where the party achieved huge success on legal issues of great importance and in the form of large savings to ratepayers. Here, TURN achieved great savings to ratepayers and prevailed on critical legal issues of due process and procedure.

Additionally, the success rate of petitions filed in the Court of Appeals is very low. A low likelihood of success indicates the contingent nature of the

⁶ D.05-04-049 at 12 ("From the foregoing discussion, it can be seen that in some situations, an intervenor must actually persuade a court to adopt the intervenor's position in whole or part for the work in obtaining judicial review to be compensable.")

⁷ D.88-02-056

judicial review work that TURN took on alone, warranting fee enhancement.⁸ In D.10-11-032, the Commission was faced with conditions similar to those presented in this request and awarded a fee enhancement of 25%. Here the contingent nature of TURN's appellate work as sole petitioner in this risky case warrants a slightly higher fee enhancement of 33%. We have coupled this enhancement with the appropriate Cost-of-Living-Adjustment (COLA) for the approved hourly rates.⁹ We find that the enhancement to the award of \$24,519 accurately reflects the degree of TURN's success on critical legal issues of due process and procedure, large savings to ratepayers, and the contingent nature of their judicial review work under the Commission's interpretation of the intervenor compensation statutes.

6. Reasonableness of Requested Compensation

TURN requests \$99,487 for its participation in these proceedings, as follows:

Work on Proceeding								
CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Robert Finkelstein	2011	99.0	\$470	D.12-03-024, at 13.	\$46,530	99	\$470	\$46,530
R. Finkelstein	2012	2.5	\$470	Seeking use of 2011 authorized rate for limited number of 2012 hours.	\$ 1,175	2.5	\$480	\$1,200

⁸ In D.94-09-22 a 35% enhancement was awarded for intervenor compensation work of high complexity and due to the highly contingent nature of the case brought.

⁹ Resolution ALJ-281, September 12, 2012.

Hayley Goodson	2011	54.25	\$310	5% step increase to authorized rate for 2010. See section 6.2 below.	\$16,817	54.25	\$300	\$16,275
H. Goodson	2012	1.25	\$310	Requested rate for 2011	\$ 388	1.25	\$325	\$406
Michel P. Florio	2010	16.5	\$535	D.10-05-012, at 4	\$ 8,828	16.5	\$535	\$8,828
Thomas Long	2012	2	\$520	Request pending in A.09-10-013 (request filed 2/17/12) ¹⁰	\$ 1,040	2	\$530	\$1,060
	Subtotal:				\$74,778	Subtotal:		\$74,299
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Robert Finkelstein	2012	13.0	\$235	Half of approved hourly rate for 2011	\$ 3,055	13	\$240	\$3,120
Hayley Goodson	2011	1	\$155	Half of requested hourly rate for 2011	\$ 155	1	\$150	\$150
	Subtotal:				\$3,210	Subtotal:		\$3,270
COSTS								
#	Item	Detail			Amount			Amount
	Copies	Printing and binding for Court of Appeal pleadings			\$567			\$567
	Copies and postage	TURN copies and postage for CPUC pleadings			\$8			\$8
	Filing fee	Court of Appeal filing fee for TURN petition			\$655			\$655
	Computerized research	Charge for access to computerized database for research associated with TURN petition			\$94			\$94
Subtotal:					\$1,324	Subtotal:		\$1,324

¹⁰ In the pending request for compensation in A.09-10-013, TURN presented a lengthy and detailed explanation of the appropriateness of the requested rate of \$520 for Long's work in 2010. Rather than repeat that showing here, TURN seeks to incorporate it by reference. If necessary, TURN could supplement this request with that showing here.

TOTAL REQUEST (without multiplier)	\$79,312		\$78,873
33% Multiplier (on judicial review work)	\$20,175		\$24,519
TOTAL REQUEST:	\$99,487	TOTAL AWARD:	\$103,392
<p>* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>** Reasonable claim preparation and travel time typically compensated at ½ of preparer's normal hourly rate.</p>			
Attorney	Date Admitted to CA BAR	Member Number	
Robert Finkelstein	June 1990	146391	
Hayley Goodson	December 2003	228535	
Michel P. Florio	November 1978	83425	
Thomas Long	December 1986	124776	

6.1 Hours and Costs Related to, and Necessary for, Substantial Contribution

We first assess whether the hours claimed for the customer's efforts are reasonable. To make this assessment we determine to what degree the hours and costs are related to the work performed and necessary for the substantial contribution. TURN documented its requested hours by presenting a breakdown of the hours of TURN attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the request for total attorney hours. TURN also claimed hours for its filings in the California Supreme Court to defend against the Commission's motion to transfer the petitions. We find this work to be reasonably related and necessary to TURN's California Appellate work.

6.2 Intervenor Hourly Rates

We next take into consideration whether the requested fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

TURN seeks an hourly rate of \$470 for Robert Finkelstein, for work performed in 2011. We previously approved this rate for Finkelstein in D.12-03-024, and adopt it here. We apply the subsequently approved Resolution ALJ-281 to Finkelstein's 2012 hours.¹¹ This COLA adjustment, after rounding to the nearest \$5, results in a new rate for Finkelstein for 2012 of \$480 and we adopt this rate here.

TURN seeks an hourly rate of \$310 for Hayley Goodson's work performed in 2011. We apply Ms. Goodson's recently adopted hourly rate of \$300 for 2011.¹² TURN seeks an hourly rate of \$310 for Goodson's 2012 work. We apply Goodson's recently adopted hourly rate of \$325 for her 2012 work in this proceeding.¹³

The Commission previously approved the rate for Michel P. Florio of \$535 an hour in D.10-05-012, and we apply this rate for his 2010 work in this proceeding.

TURN seeks to increase Legal Director, Thomas Long's 2011 hourly rate to \$520. TURN notes that D.98-11-051, where the Commission approved an hourly rate of \$250 for Long's work in 1997, the decision cites Long as having experience

¹¹ Resolution ALJ-281 applies a COLA of 2.2% to intervenor rates for work done during the 2012 calendar year.

¹² D.13-08-022.

¹³ *Id.*

equivalent to a law firm partner. Long has either practiced before, or been employed by the CPUC for 24 years. TURN states that Long's proposed hourly rate for 2011 is comparable to Florio's hourly rate for 2011. In 2000, Long's approved hourly rate was only \$10 to \$15 less than Florio's approved rate, and Florio's approved hourly rate for 2010 is \$535 (adopted in D.08-07-043). The \$520 an hour rate for Long's 2011 work is within the guidelines and principles established by the Commission for an attorney of his years of experience combined with his expertise from active participation in Commission proceedings in that time. We apply the Commission approved COLA adjustment to Long's work in 2012.¹⁴ After rounding to the nearest \$5, we adopt the hourly rate of \$530 for Long's 2012 work.

6.3 Direct Expenses

The itemized direct expenses submitted by TURN include the following:

Copies	Printing and binding for Court of Appeal pleadings	\$567
Copies and postage	TURN copies and postage for CPUC pleadings	\$8
Filing fee	Court of Appeal filing fee for TURN petition	\$655
Computerized research	Charge for access to computerized database for research associated with TURN petition	\$94
Subtotal:		\$1,324

The cost breakdown and receipts included with TURN's request shows these expenses to be commensurate with the work performed. We find these costs reasonable.

¹⁴ *Id.*

7. Productivity

Decision 98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through an intervenor's participation. This showing assists us in determining the overall reasonableness of the request.

TURN claims that the potential impact on ratepayers is quite substantial, because PG&E sought an annual revenue requirement of \$223.9 million for the project.¹⁵ By achieving judicial review of the Commission decisions, TURN forced the Commission to reassess the project's value to ratepayers. Additionally, TURN achieved a remarkable degree of success because the Court of Appeal ruled in TURN's favor on its arguments presented in the Petition for Writ of Review. We agree that TURN contributed materially to the Court of Appeal ruling through its filing of the sole Petition for Writ of Review. We conclude that such contributions justify the compensation requested by TURN. Thus, we find that TURN's efforts in this case have been productive.

8. Award

As set forth in the table below, we award \$103,392:

Work on Proceeding

Attorney/Staff	Year	Hours	Hourly Rate	Total
Robert Finkelstein	2011	99	\$470	\$46,530
Robert Finkelstein	2012	2.50	\$480	\$1,200
Hayley Goodson	2011	54.25	\$300	\$16,275

¹⁵ Scoping Ruling for A.09-09-021, issued February 1, 2010, at 8.

PROPOSED DECISION

Hayley Goodson	2012	1.25	\$325	\$406
Michel P. Florio	2010	16.5	\$535	\$8,828
Thomas Long	2012	2	\$530	\$1,060

**Work on
Proceeding Total:** **\$74,299**

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Robert Finkelstein	2012	13	\$240	\$3,120
Hayley Goodson	2011	1	\$150	\$150

**Work on NOI and
Compensation
Request Total** **\$3,270**

Calculation of Final Award

	Total
Work on Proceeding	\$74, 299
NOI and Compensation Request Preparation	\$3,270
Expenses	\$1,324
33% Multiplier	\$24,519
TOTAL AWARD	\$103,392

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month non-commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on July 10, 2012, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all requests for intervenor

compensation for three years. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed.

9. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

10. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has made a substantial contribution to the judicial review of D.10-12-050 and D.11-05-049.
2. The requested hourly rates for TURN's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses as adjusted herein are reasonable and commensurate with the work performed.
4. The total reasonable contribution is \$103,392.

Conclusion of Law

1. TURN's claim, with the adjustment set forth above, satisfies the requirements of Public Utilities Code §§ 1801-1812.

O R D E R

1. The Utility Reform Network is awarded \$103,392.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay The Utility Reform Network (TURN) the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 10, 2012, the 75th day after the filing of TURN's request, continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	Judicial Review of D1012050 and D1105049	
Proceeding(s):	A0909021	
Author:	ALJ Darwin Farrar	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Utility Reform Network (TURN)	4/26/2012	\$99,487	\$103,392	Yes	Rates for 2012 are increased for intervenor compensation claim preparation to reflect cost-of-living adjustment. Resolution ALJ-281 (September 18, 2012) Multiplier of 33% is applied to judicial review work for high degree of success on critical legal issues, large savings to ratepayers and high degree of risk in bringing this appeal. Step increase for Hayley Goodson.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	TURN	\$470	2011	\$470
Robert	Finkelstein	Attorney	TURN	\$470	2012	\$480
Hayley	Goodson	Attorney	TURN	\$310	2011	\$300
Hayley	Goodson	Attorney	TURN	\$310	2012	\$325
Michel	Florio	Attorney	TURN	\$535	2010	\$535
Thomas	Long	Attorney	TURN	\$520	2012	\$530

(END OF APPENDIX)